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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,119	09/26/2000	Takashi Yumiba	2000 1253A	4870

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EXAMINER

CHEN, SHIN HON

ART UNIT	PAPER NUMBER
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2131

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/670,119

Applicant(s)

YUMIBA ET AL.

Examiner

Shin-Hon Chen

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 34,36 and 37.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

DETAILED ACTION

1. Claims 34, 36, and 37 are examined.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 34, and 36-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sogabe et al. U.S. Pat. No. 6611534 (hereinafter Sogabe) in view of Ishiguro et al. U.S. Pat. No. 5917910 (hereinafter Ishiguro).

4. As per claim 34, Sogabe discloses an information recording medium for recording scrambled data from a recording device including scrambled key information, the information recording medium comprising: cipher key information that is scrambled (Sogabe: column 9 lines 33-54: the enciphered control key); non-scrambled data including copy control information that is not scrambled (Sogabe: column 9 lines 27-55: the enciphered content includes copy control information, but the copy control information is not enciphered because the CGMS is required to generate the content key used to decrypt the enciphered content); and the scrambled data obtained by scrambling contents data using the scrambled key information (Sogabe: column 9 lines 47-48: encrypt data with contents key), wherein the scrambled key information is generated in the recording device from at least the cipher key information that is unscrambled and the copy

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control information (Sogabe: column 9 lines 27-55: the contents key is generated using the control key that is deciphered and CGMS). Sogabe does not explicitly disclose storing cipher key information in an information recording medium. However, Ishiguro discloses generating an encryption key based on inherent information inherent in a recording medium (Ishiguro: column 1 line 65 – column 2 line 14). It would have been obvious to one having ordinary skill in the art to record the enciphered control key along with encrypted contents key and enciphered data into the gap area of the recording medium because the gap area can store information required to protect data from unauthorized access. Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to combine the teachings of Ishiguro within the system of Sogabe because it provides strong copy protection by forcing playback device to physically read the information recording medium to determine the unique inherent information stored on the recording medium and also apply the key encrypting key cryptographic scheme.

5. As per claim 36, Sogabe discloses a method for recording information, the method comprising: reading cipher key information that is scrambled (Sogabe: column 9 lines 33-54: the enciphered control key); reading copy control information that is not scrambled, from content data (Sogabe: column 9 lines 27-55: the enciphered content includes copy control information, but the copy control information is not enciphered because the CGMS is required to generate the content key used to decrypt the enciphered content); generating scrambled key information using at least the cipher key information that is unscrambled and the copy control information (Sogabe: column 9 lines 27-55); scrambling the content data using the scrambled key information to

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obtain scrambled content data (Sogabe: column 9 lines 27-55); and recording the scrambled content data and the unscrambled copy control information onto the information recording medium (Sogabe: column 9 lines 27-55). Sogabe does not explicitly disclose reading cipher key information from an information recording medium. However, Ishiguro discloses generating an encryption key based on inherent information inherent in a recording medium (Ishiguro: column 1 line 65 – column 2 line 14). It would have been obvious to one having ordinary skill in the art to record the enciphered control key along with encrypted contents key and enciphered data into the gap area of the recording medium because the gap area can store information required to protect data from unauthorized access. Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to combine the teachings of Ishiguro within the system of Sogabe because it provides strong copy protection by forcing playback device to physically read the information recording medium to determine the unique inherent information stored on the recording medium and also apply the key encrypting key cryptographic scheme.

6. As per claim 37, Sogabe discloses a method for reproducing information, the method comprising: reading cipher key information that is scrambled (Sogabe: column 9 lines 33-54: the enciphered control key), copy control information that is not scrambled and scrambled content data from an information recording medium (Sogabe: column 9 line 57 – column 10 line 15); generating descrambled key information using at least the cipher key information that is unscrambled and the copy control information (Sogabe: column 9 line 57 – column 10 line 15); and descrambling the scrambled content data using the descrambled key information to obtain

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content data (Sogabe: column 9 line 57 – column 10 line 15). Sogabe does not explicitly disclose storing cipher key information in an information recording medium. However, Ishiguro discloses generating an encryption key based on inherent information inherent in a recording medium (Ishiguro: column 1 line 65 – column 2 line 14). It would have been obvious to one having ordinary skill in the art to record the enciphered control key along with encrypted contents key and enciphered data into the gap area of the recording medium because the gap area can store information required to protect data from unauthorized access. Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to combine the teachings of Ishiguro within the system of Sogabe because it provides strong copy protection by forcing playback device to physically read the information recording medium to determine the unique inherent information stored on the recording medium and also apply the key encrypting key cryptographic scheme.

Response to Arguments

7. Applicant's arguments filed on 4/27/06 have been fully considered but they are not persuasive.

Regarding applicant's remarks, applicant argues that prior art of record does not disclose an information recording medium including cipher key information that is scrambled. However, Sogabe clearly discloses that the control key is enciphered before it is received by DRD (Sogabe: column 9 lines 35-38: the control key is enciphered). Therefore, applicant's argument is respectfully traversed.

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In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shin-Hon Chen whose telephone number is (571) 272-3789. The examiner can normally be reached on Monday through Friday 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on (571) 272-3795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shin-Hon Chen
Examiner
Art Unit 2131


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